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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 07 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a Ph.D. student at the time of filing, seeks employment as a civil engineering researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner did not qualify as an alien of exceptional ability or a member of the professions holding an advanced degree. The director further found, with little discussion of the evidence, that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner notes that he has two Master's degrees, seeks to work as an engineer, and thus qualifies as an advanced degree professional. The petitioner further asserts that the director failed to consider the evidence submitted. We concur with the petitioner that he qualifies as a member of the professions holding an advanced degree. Thus, as noted by the petitioner, the issue of whether he qualifies as an alien of exceptional ability is moot. As the AAO maintains *de novo* review, the AAO will conduct a more detailed analysis of the national interest waiver issues. *See* 8 C.F.R. § 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority). For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established that a waiver of the alien employment certification process is in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A)

> that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

As quoted above, section 203(b)(2) of the Act includes both aliens of exceptional ability and advanced degree professionals. On December 12, 1991, Congress clarified that USCIS may waive the alien employment certification process in the national interest for advanced degree professionals as well as aliens of exceptional ability. Pub. L. No. 102-232(a)(2)(D) (1991). Thus, if the petitioner qualifies as a member of the professions holding an advanced degree, the issue of whether he qualifies as an alien of exceptional ability is moot.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner was a Ph.D. student as of the date of filing. The petitioner, however, holds a 2003 Master's degree in Structural Engineering from Hunan University and a 2005 Master of Philosophy in Engineering from the City University of New York (CUNY). The petitioner's occupation, engineering, falls within the pertinent statutory definition of a profession at section 101(a)(32) of the Act. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner works in an area of intrinsic merit, bridge engineering, and that the proposed benefits of his work, improved bridge safety, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner submitted evidence regarding the importance of his area of study and proposed employment. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

On appeal, the petitioner notes the large volume of evidence he has submitted. USCIS, however, determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe,*

25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989). We will examine the quality of the evidence submitted below.

The petitioner submitted evidence of his membership in the Structural Engineers Association of New York (SEAoNY), the American Society for Nondestructive Testing, Inc. (ASNT) and the American Society of Civil Engineers (ASCE). Professional memberships are one category of evidence that can be submitted to support a claim of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). By statute, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *Id.* at 218. Thus, evidence of professional memberships, while relevant, are not dispositive to the matter at hand. *See id.* at 222. The petitioner did not submit evidence of the membership requirements for these associations. As such, the petitioner has not established that these memberships are indicative of a track record of success with some degree of influence on the field as a whole.

The petitioner also submitted verification of his past work experience. With regard to experience, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(B). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

On appeal, the petitioner asserts that the director failed to consider the petitioner's [redacted]

The materials for the 7th Annual NJDOT Research Showcase on October 14, 2005 in Princeton reveal that at least two other students won this award. The petitioner has not established that this local recognition limited to students is in recognition of achievements and significant contributions. Even if the student award was at this level, such recognition is simply one category of evidence that can be used to established exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). We reiterate that exceptional ability cannot, by itself, justify a waiver of the alien employment certification process. The petitioner has not established how local recognition limited to students is indicative of or consistent with the petitioner's influence on the field as a whole.

In addition, the petitioner submitted evidence that CUNY awarded him financial aid in 2003, 2004, 2006 and 2007. Even if this financial aid was based on merit rather than financial need, academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* at 219, n.6.

The petitioner also submitted certificates for completion of professional development hours. Such knowledge or training, however, can be articulated on an application for an alien employment certification and does not inherently meet the national interest threshold. *Id.* at 221.

[redacted], submitted by the petitioner, reveals that NJDOT requested that the University Transportation Research Center (UTRC) conduct research to focus on the identification of technologies and solutions most appropriate for scour countermeasures of bridges in New Jersey. The petitioner submitted a projects browser page from the Transportation Research Board of the National Academies' website showing the following project: [redacted] The website lists the principal investigator as [redacted] The petitioner coauthored the "[redacted]," contained in the record, with his Ph.D. supervisor, [redacted] The authors completed the handbook in cooperation with NJDOT and the U.S. Department of Transportation Federal Highway Administration.

The handbook, however, contains the following disclaimer:

> The contents of this report reflect the views of the author(s) who is (are) responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the New Jersey Department of Transportation or the Federal Highway Administration.
>
> This report does not constitute a standard, specification or regulation.

Moreover, in a February 11, 2007 response to an email request for a copy of the handbook, [redacted] indicated that the copy being provided was unofficial because NJDOT had yet to approve the handbook. Thus, it does not appear that this handbook had influenced the field or even been adopted by the agency commissioning the handbook as of the date of filing the petition, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The petitioner submitted his two Master's theses and his doctoral thesis proposal and report, "[redacted]" The petitioner has not demonstrated that these unpublished manuscripts have been widely distributed and influential.

The petitioner also submitted evidence of conference proceedings and foreign language articles. While this evidence may demonstrate the distribution of the petitioner's work, dissemination alone is insufficient to show the influence of that work. [redacted] cited one of the petitioner's presentations in one of his proposals. This citation does not reflect any reliance on the petitioner's work beyond the petitioner's own collaborators. The petitioner submitted no evidence of independent citation or similar evidence of independent reliance on his work.

According to the evidence of record, the petitioner is one of 54 Student Leadership Council (SLC) members representing 11 colleges. The petitioner submitted materials about SLC stating:

> SLC is a formal incarnation of students who are involved in research programs of the Multidisciplinary Center for Earthquake Engineering Research (MCEER), and are performing research under the supervision of a faculty advisor. Since its inception, the MCEER has included and encouraged student efforts throughout its research program and in all of the disciplinary specialties concerned with earthquake engineering.
>
> While associated with MCEER, students participate in annual Center Investigator meetings, attend conferences, workshops and seminars, and have the opportunity to make presentations at these events. The SLC was formed in 1999 to formalize these programs and to afford students from many different institutions the opportunity to meet with each other and develop/improve interaction.

The petitioner also submitted a page on MCEER's website discussing a recent virtual learning event where students, including the petitioner, made student research presentations remotely. While SLC is designed to offer opportunities to students, nothing in the record indicates that SLC membership, by itself, is indicative of an influence on the field as a whole.

The petitioner further submitted evidence that [redacted] invited the petitioner to review manuscripts for [redacted] and September 2008. [redacted] also forwarded a request to review papers for a "PACAM X" conference to the petitioner. On June 28, 2007, [redacted] Director of the Bridge Evaluation Services Bureau at the [redacted], invited the petitioner to review a manuscript for [redacted]. In a separate letter, however, [redacted] indicates that he has been involved with the petitioner's research and has served as an external reviewer of that work. Requests to review manuscripts from the petitioner's own Ph.D. supervisor and a local external reviewer of his work does not establish the petitioner's influence on the field outside of the New York/New Jersey metropolitan area.

The remaining evidence consists of reference letters. [redacted] at [redacted] discusses the petitioner's work at [redacted] and [redacted] asserts that the petitioner was "one of the pioneers, who used cutting-edge computer technologies to conduct research on experimental technology, nonlinear analysis, finite element analysis, nondestructive diagnosis and concrete slabs in China." [redacted] lists three articles as the petitioner's "most notable research achievements." As stated above, mere publication is insufficient. It is the petitioner's burden to demonstrate the influence of the published articles. The petitioner did not submit evidence that his Chinese articles have been cited or otherwise applied in the field.

Professor [redacted] also asserts that the petitioner "worked on the frontier of civil engineering and played a leading and critical role in a wide variety of construction projects" including six bridges, two factories, two stores, a school dormitory, a garden, a gymnasium and 11 business halls. According to the

Department of Labor's Occupational Outlook Handbook (OOH), civil engineers "design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems." *See* http://www.bls.gov/oco/ocos027.htm, accessed December 23, 2010 and incorporated into the record of proceeding. As it is inherent to the petitioner's occupation to design buildings and bridges, the petitioner's participation in such work is not sufficient to warrant a waiver of the alien employment certification process. [redacted] does not explain how the projects on which the petitioner worked have influenced the field of civil engineering as a whole.

Finally, [redacted] notes that the petitioner has written in both English and Chinese, "two of the most widely-used languages in the world" and, thus, "is able to make an impact in the field far greater than those of most others in similar endeavors." Nothing in the statute or legislative history suggests that Congress intended the national interest waiver as a blanket waiver for every engineering researcher who has written in Chinese and English. We note that at issue is the petitioner's ability to benefit the national interest of the United States. While we do not contest that the petitioner may include his Chinese-language articles as part of his past track record, we are not persuaded that the petitioner's ability to write in Chinese is relevant. As stated above, the record contains no evidence, such as citations, that might demonstrate the influence of the petitioner's Chinese-language publications.

[redacted] discusses the petitioner's Ph.D. researching infrastructure protection including earthquake engineering, security of highway bridges from intentional and unintentional blast loads and protection of bridges from scour during high floods. [redacted] notes that MCEER, the U.S. Department of Transportation and NJDOT have supported this research, an indication of its national importance. As stated above, however, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218.

[redacted] discusses three projects on which the petitioner has worked at CUNY. First, [redacted] discusses the petitioner's Ph.D. dissertation on blast effects on highway bridges with an emphasis on mechanism and mitigation. [redacted] explains the importance of this area of research and asserts that the petitioner "developed a numerical model to apply blast loads on bridge components [redacted] which is quite [a] challenging effort." [redacted] concludes that the petitioner's model simulates blast loads quite reasonably and "comparably" with the U.S. Army Corps of Engineer's program. [redacted] provides no examples of independent engineers adopting the petitioner's model over the U.S. Army Corps of Engineer's model. Rather, [redacted] speculates that the petitioner's model "is going to be pioneering and leading approach that is likely to be used by engineers across the nation." [redacted] then asserts that the petitioner is taking a pioneering approach to investigating seismic guidelines through a multi-hazard point of view. [redacted] does not, however, identify the petitioner's results from this approach or how they have influenced the field. [redacted] also discusses the petitioner's high-precision finite element model of a highway bridge to investigate blast effects on different bridge components and

various mitigation studies. Once again, [redacted] praises the model without providing any examples of how this model is being used by independent engineers.

Second, [redacted] discusses the petitioner's work on the development of guidelines for scour countermeasures in New Jersey, noting the petitioner's co-authorship of the abovementioned handbook on the subject. [redacted] predicts that the handbook will be used as a standard guideline in New Jersey to design new bridges and retrofit old bridges. In his subsequent letter provided on appeal, dated nearly two years later, [redacted] is still only predicting that the handbook "is going to be a primary guideline for the protection of bridges from scour during floods." [redacted] does not suggest that NJDOT has approved the handbook and does not provide examples of how the handbook is being applied by independent engineers.

Third, [redacted] asserts that the petitioner "has been the leading researcher on developing detailed design drawings for an actual [redacted] for long-term corrosion monitoring." [redacted] further asserts that the petitioner's design drawings "will be used" shortly for long-term corrosion monitoring of the bridge. The record does not contain letters from government officials confirming these assertions or evidence explaining how the petitioner's work on one local bridge has influenced the field as a whole.

[redacted] asserts that the petitioner developed a numerical model to apply dynamic blast loads on highway bridge components using LS-DYNA software. [redacted] reiterates that the petitioner's model is the only approach that can simulate the effects of blast loads on bridge components comparably with [redacted] but once again does not suggest that the petitioner's model is replacing [redacted] among independent engineers.

[redacted] next asserts that the petitioner's "pioneering work" on comparative design of bridge components supports multi-hazard design of bridge components. While [redacted] explains the importance of multi-hazard design and notes that it is sponsored by the U.S. Department of Transportation, he does not provide examples of how the petitioner's work in this area is influencing the field as a whole. Most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Finally, [redacted] asserts that the petitioner developed "a very high-precision finite element model of a highway bridge to investigate blast effects on different bridge components and various mitigation studies." While [redacted] speculates that this model "may be used in developing design guidelines for the protection of bridge components against blast and earthquakes," he does not suggest that any independent engineers are applying the petitioner's model in this way.

[redacted] provides similar information to that discussed above. As with the above letters, [redacted] discusses the importance of the

petitioner's area of work and speculates that his simulation of blast loads "may be used by U.S. highway agencies in ensuring security of highway bridges" without providing examples of the petitioner's work being used in this manner. [redacted] notes that the petitioner has presented and published his work. At issue, however, is the influence of these presentations and publications. [redacted] does not suggest that independent engineers are citing or otherwise applying the petitioner's presentations and publications.

[redacted] at [redacted] asserts that the petitioner's work on blast loads produced analysis tools and countermeasure matrices that "are a convenient reference guide on a wide range of blast resistant problems." [redacted] does not provide examples of independent engineers using the petitioner's analysis tools and matrices as a reference guide. [redacted] further asserts that the petitioner's research on scour countermeasures for NJDOT was "required to be suitable for nationwide application." Once again, however, the record contains no evidence that the handbook resulting from this work has been influential in the field.

[redacted] a principal at [redacted] speculates that the petitioner's work "is likely to be used immediately by agencies such as Federal Highways [*sic*] and [the] United [States] Department of Homeland Security because of its national significance and uniqueness." Speculation as to future use of the petitioner's work is insufficient absent evidence of his track record of success with at least some degree of influence on the field as a whole. *NYSDOT*, 22 I&N Dec. at 219 n.6.

On appeal, the petitioner submitted a letter from [redacted] who claims to be a structural design specialist with the Federal Highway Administration Resource Center. [redacted] asserts that he became familiar with the petitioner's work in 2005 and has been in contact with the petitioner since that time "to incorporate concepts from his cutting-edge work on blast load effects" into [redacted] training program materials, designed to train engineers from state departments of transportation about bridge security. [redacted] further asserts that "stakeholders," including the Federal Highway Administration and the Department of Transportation, are already familiar with the petitioner's work. [redacted] letter does not appear on Federal Highway Administration letterhead. The biography that follows is for [redacted] at the Federal Highway Administration. The petitioner has not established that [redacted] and [redacted] are one and the same person.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of notoriety without providing specific examples of how the petitioner's innovations have influenced the field. Merely repeating the legal standard does not satisfy the petitioner's burden of proof.[1] The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).